Senator Feinstein Questions Deportation of Long-Term, Law-Abiding Undocumented Immigrants

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Washington, DC – *Senator Dianne Feinstein (D-Calif.) expressed concern today over the Department of Homeland Security's practice of deporting law-abiding undocumented immigrants with children who are American citizens and who have lived in the United States for more than 10 years.*

In a letter sent to Homeland Security Undersecretary Asa Hutchinson today, Senator Feinstein questioned the reasoning behind cases in which an immigration judge has ruled that an undocumented immigrant could stay in the United States, only to have the decision overturned by the Board of Immigration Appeals.

The text of the letter follows:

"I am writing to you to express my concern about the removal of aliens from the United States who have been here for many years and where an immigration judge has granted them relief under our immigration laws. I am also concerned about the low number of approvals relating to cancellation of removal relief for non-lawful permanent residents under section 240A of the Immigration and Nationality Act.

Constituents of mine have contacted me requesting private bills for undocumented aliens and their family. These families have resided in the United States for 10 to 20 years, have children born here, pay taxes, and are gainfully employed and law-abiding. Despite these positive factors, immigration officials are seeking to remove them from this country. These cases are troubling because they involve long-term residents who, although illegally present, are otherwise valued members in their communities. Most troubling is that in many of these cases, the individuals tried to legalize their immigration status in the United States, but many were caught up in the transition under the "Illegal Immigration Reform and Immigrant Responsibility Act of 1996" (IIRIRA). In most cases, they qualified for relief under the pre-IIRIRA suspension of deportation provisions, but did not qualify for cancellation of removal relief post-IIRIRA. Additionally, some of the cases involve immigration judges granting relief under the cancellation of removal provisions, only to have that decision overturned by the Board of Immigration Appeals.

This last point I find especially worrisome. Why is an appellate body, which does not personally interview the applicant and his or her witnesses, overturning the decision of an immigration judge on a discretionary form of relief? I believe the practice of overturning the decisions of immigration judges in these cases should be reconsidered.

Another point I would like to raise is that in evaluating these cases it has come to my attention that the Executive Office for Immigration Review can approve up to 4,000 cancellation of removal cases for non-lawful permanent residents in a fiscal year. However, rarely has this ceiling been reached. In fact, the number of approvals has always been well under 4,000. The highest number of such cases granted by the Executive Office of Immigration Review was 2,345 in fiscal year 2003 and the lowest was 798 in fiscal year 1999. In reviewing their annual statistics, on average, only 1,268 cancellation of removal cases are approved annually for non-lawful permanent residents.

These statistics are troubling because I believe that if Congress authorized a form of relief under the immigration laws, then its use should be maximized. As you know, the requirements which must be met by undocumented aliens in order to qualify for cancellation of removal are: (1) they have been present in the United States for at least 10 years; (2) they are law-abiding and of good moral character; and, (3) they can demonstrate that their removal from the United States would result in exceptional and extremely unusual hardship to their US citizen or lawful permanent resident spouse, parent or child. These are exactly the types of cases I am seeing, and yet immigration officials are seeking to remove these families from the country.

Since I began my term as Senator, I have introduced 11 private bills, seven of which have passed. In the 108th Congress, I already have five private bills pending and I expect to file three more in the near future. While I consider only the most extraordinary cases for private relief legislation, there are many more cases with similar circumstances to those I described earlier. These individuals and their families have settled in this country and are law-abiding and productive members in their communities. Removing them from the United States may not be the best use of the Department of Homeland Security's resources.

I look forward to your response regarding these issues."

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